

REMARKS

Claims 1-12 are pending. Claims 1, 2, and 3 have been amended. No new matter has been added by way of this amendment. Reconsideration of the application is respectfully requested.

Claims 1-12 stand rejected under 35 U.S.C., second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. According to the Examiner, “[c]laim 1, as presently written, claims a plurality of fibrous layers, which are fastened at intervals but are also separate and allow the apertured film layer to show through. In the way the claim is written it is saying that the layers are separate and parallel but also that the layers are bonded at intervals, which does not make sense.”

In response to this ground of rejection, Applicants have amended claim 1 to recite that the fibrous layer is a plurality of layers which extend longitudinally in parallel and are separate from each other at predetermined latitudinally spaced intervals, where each fibrous layer is fixed to the porous film at spaced fixing portions. As a result, Applicants respectfully assert that claim 1 as amended now particularly points out and distinctly claims the subject matter which Applicants regard as the invention. Therefore, reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1-12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,891,258 to *Fahrenkrug* in view of U.S. Patent No. 6,646,178 to *Furaya et al.* For the following reasons, this rejection is respectfully traversed.

Set forth on page 2 of the Office Action is the statement:

The applied reference ('178) has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 C.F.R. 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). *For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(1)(1) and § 706.02(1)(2).* (Emphasis added)

With respect to the *Furuya et al.* patent, Applicants respectfully assert that the subject matter of the *Furuya* patent and the claimed invention were, at the time the invention was made, subject to an obligation of assignment to the same person. As evidence of this, Applicants have enclosed the recorded assignment of the present application, as well as the recorded assignment of the *Furuya et al.* patent. Therefore, the *Furuya et al.* patent does not qualify as prior art.

U.S. Patent No. 4,891,258 to *Fahrenkrug* relates to a stretchable absorbent composite for receiving, absorbing and retaining liquids and waste materials comprising a liquid-pervious layer, a liquid-impervious layer, an absorbent layer, and a liquid-pervious stretchable layer between the liquid-pervious layer and liquid-impervious layer. According to this patent, the stretchable layer is stretch-bonded to the other layers and forms a plurality of rugosities in the other layers upon relaxing the stretchable layer (see col. 1, lines 40-49).

The *Furuya et al.* patent has been cited as a teaching for modifying the fibrous layer of *Fahrenkrug* and providing it with a strip configuration that is fixed at space fixing portions based on

the motivation of providing a surface member with a high liquid permeability and a high rewet-preventing property, as disclosed by *Furuya* et al. (col. 2, lines 18-21). However, based on the inapplicability of the *Furuya* et al. patent due to the subject matter of this reference and the claimed invention being subject to an obligation of assignment to the same person, it follows that the *Fahrenkrug* patent by itself fails to teach or suggest the invention as set forth in amended claim 1. As a result, reconsideration and withdrawal of the rejection are in order, and a notice to that effect is respectfully requested.

In view of the patentability of amended independent claim 1 for the reasons set forth above, dependent claims 2-12 are also patentable over the cited references.

Based on the foregoing amendments and remarks, this application should be in condition for allowance. Early passage of this case to issue is respectfully requested. However, if there are any questions regarding this Response, or the application in general, a telephone call to the undersigned would be appreciated since this would expedite the prosecution of the application for all concerned.

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Respectfully submitted,

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